

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHARNAE JONES,

Plaintiff,

v.

**PROVISTA DIAGNOSTICS, INC.
and
TODAS MEDICAL,
and
DANIEL HIRSCH,
In his personal capacity,**

Defendants.

**CIVIL ACTION NO.
1:22-cv-05134-MLB
JURY TRIAL DEMANDED**

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ MOTION FOR
EXTENSION OF TIME TO RESPOND TO PLAINTIFF’S COMPLAINT**

Plaintiff, Charnae Jones, (“Plaintiff”), by and through undersigned counsel, responds to Defendants’ Motion for Extension of Time to Respond to Plaintiff’s Complaint. Plaintiff respectfully requests that this Court deny Defendants’ Motion or in the alternative, limit the time allowed for Defendants to file its Answer to the Court:

1. On December 30, 2022, Plaintiff filed her Complaint (Doc. 1).

2. Defendants Todos and Provista were served with the Summons and Complaint on February 8, 2023. (Doc. 9).
3. Defendants' Answer to Plaintiff's Complaint was due 21 days later, on March 1, 2023.
4. Defendants' counsel now claims that it was not retained until February 27, 2023 although Defendants' counsel did not, in their email to Plaintiff's counsel, inform Plaintiff's counsel that they were retained on February 27, 2023.
5. Defendants have been aware that they failed to pay Plaintiff for months.
6. Defendants made multiple promises, since October, 2022, via email to Plaintiff that they would pay her. They did not.
7. After being served, according to Defendants' counsel, Defendants waited almost three weeks before retaining an attorney to Answer Plaintiff's Complaint.
8. These were the facts that caused Plaintiff's counsel to deny Defendants' counsel her consent to a 30-day extension. The 30-day extension requested by Defendant was in addition to the 21-days Defendants were already afforded in accordance with the Federal Rules of Civil Procedure.
9. Although Defendants, claim in their Motion, that this extension will

allow them to explore an amicable resolution, to date, Defendants have not sought to do so.

10. Allowing a 30-day extension does prejudice Plaintiff in that she has not been paid wages she was due from months ago. This extension is being sought for the purposes of delay because delay is in-keeping with Defendants' pattern of behavior. Defendants have delayed, multiple times, their promises to pay Plaintiff.

MEMORANDUM OF LAW

“[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time...on motion made after time has expired if the party failed to act because of excusable neglect.” Rule 6(b)(1)(B), Fed. R. Civ. P. [F]ailure to file a timely response to a complaint evidences neglect on the part of both the attorney and the client, and perhaps inexcusable neglect.” Jones v. Woodson, 1:20-cv-4339-MLB (N.D. Ga. Mar. 28, 2022).

In this case, Defendants filed a motion to extend the time period one day before the expiration of the time specified by the court to file an Answer. However, it appears that the Defendants waited until 2 days before the Answer was due before retaining an attorney to file the Answer. “The determination of what constitutes excusable neglect is generally an equitable one, taking into account the

totality of the circumstances surrounding the party's omission." Sloss Industries Corp. v. Eurisol, 488 F.3d 922, 934 (11th Cir. 2007). Knowing how the Defendants have been purposely delaying payment to Plaintiff, the totality of the circumstances suggest that the delay in retaining an attorney was not in good faith and the delay was for an improper purpose.

WHEREFORE Plaintiff requests that the Court DENY Defendants' Motion for an Extension to File its Answer or in the alternative, and since Defendants have already had 28 days in which to file their Answer, Plaintiff requests that the Court limit any extension to just seven (7) more days, making the new deadline March 14, 2023. (signature to follow on next page)

Dated this 7th day of March, 2023.

/s/ Beverly A. Lucas

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Attorney for Charnae Jones

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CERTIFICATION OF SERVICE AND FONT COMPLIANCE

I do hereby certify that this document has been prepared in Times Roman font, 14 point, in compliance with LR 5.1(C) of this Court. I further hereby certify that on this 7th day of March 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Beverly A. Lucas
Attorney for Charnae Jones
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**[Proposed] ORDER ON DEFENDANTS' MOTION FOR EXTENSION OF
TIME TO RESPOND TO PLAINTIFF'S COMPLAINT**

The Court having reviewed the foregoing Plaintiff's Response to
Defendants' Motion to Extend Time to File an Answer to Plaintiff's Complaint

_____ Denies Defendants' Motion to Extend the Time to Answer
Plaintiff's Complaint OR

_____ The Court Extends Defendants' Time to File an Answer until
March 14, 2023.

HEREBY ORDERED this ____ day of March, 2023, in the United States
District Court, Northern District of Georgia.

The Honorable Michael L. Brown
District Court Judge